
(2015) 04 JH CK 0144
In the Jharkhand High Court
Case No : WP(C) No. 982 of 2015

Sanjay Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 30-04-2015

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 11, 14, 7, 9

Citation : (2015) 2 JLJR 621

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : V.P. Singh and Rashmi Kumari, for the Appellant; Abhay Kumar Mishra, Advocates for the Respondent

Final Decision : Allowed

Judgement

S. Chandrashekhar, J—Aggrieved by order dated 25.6.2013 in Certificate Case No. 74(MR) 1992-93 whereby, warrant of attachment against the petitioner has been ordered, the present writ petition has been filed. Further prayers for quashing order dated 14.10.1992 and the entire proceeding in the Certificate Case have also been made in the writ petition. The brief facts of the case are that, a certificate proceeding was initiated at the instance of District Mining Officer, Ranchi on the ground that the petitioner was running brick kiln in the Village-Chatakpur for which the petitioner was liable to pay a sum of Rs. 41,400/-. The petitioner appeared on 3.2.1993 and filed objection under Section 9 of the Bihar and Orissa Public Demand Recovery Act, 1914 stating that he was not running brick-kiln and he never manufactured bricks. Though, notice was issued to the respondent-District Mining Officer, no reply was filed on behalf of the respondents and suddenly, warrant of attachment was ordered vide order dated 25.6.2013.

2. Heard the learned counsel for the parties and perused the documents on record.

3. Mr. V.P. Singh, the learned Senior Counsel for the petitioner submits that the petitioner has specifically denied that he was running a brick-kiln or he manufactured bricks in Village-Chatakpur, Ranchi in the year, 1992-93. In the record of the Certificate Case, Form No. 2 in terms of 1914 Act is not available. The Certificate of Public Demand was signed and prepared by the Certificate Officer on 14.10.1992, on the basis of requisition No. 84 of 1992 of the respondent-District Mining Officer. It is further submitted that proceeding in the Certificate Case was conducted irregularly and suddenly, after a lapse of about 20 years warrant of attachment has been issued by the Certificate Officer which cannot be approved in law. Per contra, Mr. Abhay Kumar Mishra, the learned S.C.-III appearing for the respondent-State of Jharkhand submits that since the petitioner did not pay the certificate amount, the warrant of attachment has rightly been issued by the Certificate Officer.

4. The original record of Certificate Case No. 74(MR) 1992-93 has been received in the Court. The proceeding in the Certificate Case discloses that on 14.10.1992, the certificate proceeding was initiated for recovery of a sum of Rs. 41,400/-. Before the next date of hearing that is on 3.2.1993, the petitioner had filed his objection to which the District Mining Officer was directed to file reply. Thereafter, the matter was listed on 10.5.1993. Five years thereafter, the matter was listed next on 13.8.1998 and there-after, on 22.5.2000. The proceeding in Certificate Case No. 74(MR) 1992-93 further discloses that the case was listed for hearing in the years, 2001, 2002, 2003 and 2004. After 13.12.2004, the case was listed, after about 9 years, on 13.5.2013 and on the next date, hearing in the Certificate Case was closed and an order of warrant of attachment was issued: Section 14 of Bihar and Orissa Public Demand Recovery Act, 1914 reads as under--

"14. When certificate may be executed.--No step in execution of a certificate shall be taken until the period of thirty days has elapsed since the date of the service of the notice required by Sections 7 and 11, or when a petition has been duly filed under Section 9, until such petition has been heard and determined:

Provided that, if the Certificate Officer in whose office a certificate is filed is satisfied that the certificate-debtor is likely to" conceal, remove or dispose of the whole or any part of. such of his movable property as is liable to attachment under this Act, and that the realization of the amount of the certificate would in consequence be delayed or obstructed, he may at any time direct, for reasons to be recorded in writing, an attachment of the whole or any part of such movable property."

5. From the proceeding in the Certificate Case, as noticed above, it is apparent that objection filed by- the petitioner was not decided. In fact, the respondent-District Mining Officer did not file reply to the objection filed by the petitioner. The proceeding has been conducted irregularly, is apparent from the aforesaid narration of facts.

6. Considering the above facts, I am of the opinion that impugned order dated 25.6.2013 is liable to be quashed and is hereby quashed. The petitioner is permitted to submit objections supplementing the objection already filed by him. The Certificate Officer is directed to decide the objection of the petitioner, first, within four weeks. Since, the petitioner has already filed objection, the contention regarding validity of requisition in Form No. 2 is not required to be adjudicated in the present proceeding. It would be open to the petitioner to raise all the pleas which have been raised in the present proceeding. The writ petition stands allowed, in the aforesaid terms.